
UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

RHEASHAD LAMAR LOTT, §
§
Petitioner, §
§
versus § CIVIL ACTION NO. 1:17-CV-256
§
DIRECTOR, TDCJ-ID, §
§
Respondent. §

**MEMORANDUM ORDER OVERRULING OBJECTIONS AND ADOPTING
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

Rheashad Lamar Lott, an inmate confined within the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se*, filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

The court referred this matter to the Honorable Zack Hawthorn, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of the court. The magistrate judge has submitted a Report and Recommendation of United States Magistrate Judge recommending the petition be dismissed.

The court has received the Report and Recommendation of United States Magistrate Judge, along with the record, pleadings, and all available evidence. Petitioner filed objections to the Report and Recommendation.

The court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. After careful consideration, the court is of the opinion the objections are without merit. Petitioner challenges a prison disciplinary conviction which did not result in the loss of good conduct time credits. The magistrate judge concluded that such a challenge could not

be asserted in petition for writ of habeas corpus because the disciplinary conviction had no direct effect on the fact or duration of petitioner's confinement. This conclusion is correct. Despite petitioner's assertion to the contrary, a prisoner may not challenge the conditions of his confinement in a petition for writ of habeas corpus. *Preiser v. Rodriguez*, 411 U.S. 475, 483 (1973).¹

ORDER

Accordingly, petitioner's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered dismissing the petition.

In addition, the court is of the opinion petitioner is not entitled to a certificate of appealability. An appeal from a final judgment denying habeas relief may not proceed unless a judge issues a certificate of appealability. *See 28 U.S.C. § 2253*. The standard for a certificate of appealability requires the petitioner to make a substantial showing of the denial of a federal constitutional right. *See Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000); *Elizalde v. Dretke*, 362 F.3d 323, 328 (5th Cir. 2004). In order to make a substantial showing, the petitioner need not establish that he would prevail on the merits. Rather, he must demonstrate that the issues raised in the petition are subject to debate among jurists of reason, that a court could resolve the issues in a different manner, or that the questions presented are worthy of encouragement to proceed further. *See Slack*, 529 U.S. at 483-84. Any doubt regarding whether to grant a certificate of appealability should be resolved in favor of the petitioner, and the severity of the penalty may be

¹ Acting at petitioner's request, the court has severed the civil rights aspects of petitioner's claims into a separate action.

considered in making this determination. *See Miller v. Johnson*, 200 F.3d 274, 280-81 (5th Cir. 2000).

In this case, the petitioner has not shown that the issue of whether his claims may be pursued in a habeas petition is subject to debate among jurists of reason. The factual and legal questions raised by petitioner have been consistently resolved adversely to his position and the questions presented are not worthy of encouragement to proceed further. As a result, a certificate of appealability shall not issue in this matter.

SIGNED at Beaumont, Texas, this 18th day of December, 2017.



MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE